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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixteenth session

SUMMARY RECORD OF THE 6TH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 30 April 1997, at 3 p.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (agenda item 7) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Guyana (E/1990/5/Add.27; E/C.12/Q/GUY/1) (continued)

1. At the invitation of the Chairperson, Mr. Brewster (Guyana) took a place at the Committee table.

Issues relating to the implementation of the Covenant (continued)

2. Mr. JIMENEZ BUTRAGUEÑO, referring to the general framework within which human rights were protected (E/C.12/Q/GUY/1, section I, B), asked whether there was any actual jurisprudence in Guyana establishing mechanisms for protecting economic, social and cultural rights that were guaranteed by the Constitution and the laws. It would be interesting to know of any specific cases that had been brought to secure, for instance, equality of women or family rights.

3. Guyana's low human development index even during a period of apparently high economic growth was a matter of concern: Guyana was ranked 103rd by the United Nations Development Programme, below other countries in the region, in respect of such matters as life expectancy, literacy and education. The Government should provide information on its plans for improving living conditions and opportunities for the population. She was also concerned about the protection of the rights of the country's indigenous people, a true minority of only 6 per cent. The State held 90 per cent of their lands, and the Ministry of Indigenous Affairs reportedly lacked funds and personnel and was consequently ineffective. She wondered if there had been any improvement in the infant mortality rate of 34 per 1,000 under the age of 5; 1995 statistics from outside sources reported that malnutrition was a cause of 95 per cent of infant deaths.

4. Mr. TEXIER, referring to article 7 of the Covenant, said that the Committee would be interested in seeing minimum wage statistics that not only indicated the actual figures but also showed the buying power they represented. He also wished to know whether the laws regarding annual leave had been liberalized.

5. Mr. SADI, referring to article 6 of the Covenant, observed that some countries focused on raising the gross national product (GNP) at the expense of job creation. He would like to know whether the Guyanese macroeconomic planners kept that concern in the forefront and were setting up the kind of industrial and agricultural projects that would generate work.

6. Mr. BREWSTER (Guyana) said that the macroeconomic planners in his country were very conscious of the need to increase employment opportunities as distinct from raising the GNP. There were, however, constraints: the

economy was driven by the private sector and its labour-saving technologies. The Government did not try to manage job creation directly but rather pursued indirect approaches and incentives.

7. Mrs. BONOAN-DANDAN, speaking as Rapporteur, said that she had been asked by the Committee to indicate to the Guyanese delegation the kind of response that was expected from States parties and their delegations in the submission and consideration of reports.

8. Regarding the report itself (E/1990/5/Add.27), relevant statistics - preferably disaggregated by sex - should be supplied, where appropriate or where requested in the list of issues, and should be included in the main body of the report; as should any descriptive information requested, which should be complete, specific and practical. Guyana's report, instead, had repeatedly referred the Committee to appendices in which the data was of little relevance. Also, the State party should focus on the de facto situation rather than on generalities, reporting on practical application of any legislation, the difficulties the Government was encountering in the implementation of any of the articles of the Covenant and the steps it was taking to surmount those difficulties. All those points were clearly spelled out in the Committee's revised general guidelines regarding the form and contents of reports.

9. The delegation's written responses to the list of issues could only be characterized as irresponsible, and needed to be totally re-written. In Section C, 6, for example, the Committee asked what had been done to publicize the Covenant and make the public and the authorities aware of their rights under the Covenant; but the Government's curt answer provided no supporting evidence that it had indeed done so.

10. The Committee's very specific questions on non-discrimination and international cooperation and on equality between men and women had also received short, perfunctory answers, and the same held true for all the articles of the Covenant. Laws, for instance, had been simply enumerated, but no indication had been given of their content or implications, of the authorities responsible for implementing them and monitoring their implementation, or of the problems encountered. In the case of almost half of the articles, the Government had promised to provide subsequent information but had never done so. The Committee expected comprehensive answers to the list of issues, detailing actual progress made, discussing the indicators used to measure progress and providing appropriate statistics.

11. The Committee's lists of issues were not drafted lightly. It was critical to the Committee's work to understand the situation in the country of a State party, and it was to the State party's advantage to discuss its difficulties with the members of the Committee. The Committee did not want a rosy picture, but rather a real picture.

12. The CHAIRPERSON observed that the Committee's lists of issues were a carefully drafted, comprehensive and quite precise statement of the Committee's principal concerns, and Governments, should give them the consideration they deserved. The Committee would be sending a letter to the Government of Guyana outlining its general approach and again furnishing the

guidelines to be followed. He would also ask the representative of Guyana to convey a sense of what the Committee needed to receive by the next session in the form of advance written replies. Guyana should ensure that its delegation, preferably from the capital, would be able to answer questions put to it. He noted that the Committee had concluded the first phase of its consideration of the initial report of Guyana.

13. Mr. BREWSTER (Guyana), again expressing regret for the shortcomings of Guyana's presentation, thanked Mrs. Bonoan-Dandan for her very useful comments, which he would be conveying verbatim to his Government. He expressed appreciation for the Committee's frank criticisms and practical suggestions and he assured the Committee of his Government's good will.

14. Mr. Brewster (Guyana) withdrew.

15. The CHAIRPERSON observed that in relation to the report of Guyana the Committee had been more flexible than was the norm. He believed, however, that in such an unsatisfactory situation the course adopted was the best one possible.

16. Mr. TEXIER suggested that the Committee should reflect on the reasons cited by the delegation of Guyana for its inability to provide satisfactory answers. The Committee should perhaps make it a rule to give more preparatory help to developing countries.

Review of the implementation of the International Covenant on Economic, Social and Cultural Rights: Central African Republic

17. The CHAIRPERSON recalled that, if a State Party had not fulfilled its reporting obligations under articles 16 and 17 of the Covenant, the Committee could proceed to review the status of implementation of the Covenant in that country without a report, basing its observations on a variety of materials from both intergovernmental and non-governmental sources. The purpose of that procedure was to ensure that States parties which did not submit reports were nevertheless subjected to the same degree of scrutiny as those which did so, and to reinforce the point that ratification of the Covenant brought with it a number of responsibilities. The Central African Republic had not submitted a single report, despite being a State Party since 1981. Draft concluding observations regarding its progress in implementing the Covenant had been prepared. However, he proposed that their consideration be postponed until that text was available in all the working languages.

18. It was so decided.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 5) (continued)

Draft General Comment (HR/CESCR/NONE/1996/5) (continued)

Paragraph 15

19. Mr. ADEKUOYE asked whether squatters who had taken possession of property, despite repeated warnings against doing so, were entitled to compensation when they were evicted.

20. The CHAIRPERSON said that there was an obligation not to destroy unnecessarily property belonging to persons being evicted. If such persons patently had no alternative means of obtaining shelter, appropriate minimum measures to provide accommodation should accompany the act of eviction. The burden of compensation for damage to property was imposed on the State, rather than on the persons whose property had been occupied.

21. Mr. TEXIER said that the principle of compensation for damage to the property of persons must be reiterated. Nevertheless, the matter was one for States parties to deal with on a case-by-case basis.

22. Mr. PILLAY said that even if persons were forced out of an illegal occupancy, adequate compensation was required for any damage caused to real or personal property during the course of the ouster.

23. The CHAIRPERSON agreed with Mr. Texier that the matter should be left to domestic legislation, but the principle of compensation should be enunciated in the general comment.

Paragraph 16

24. Mr. MARCHAN ROMERO did not see any need to specify, in the second line of the paragraph, the link between evictions and the resulting non-enjoyment of the right to adequate housing. He believed that all evictions led to deprivation of adequate housing.

25. The CHAIRPERSON said that there were persons who would have resources to find adequate housing upon eviction. In such cases there would not be an automatic obligation on the Government to provide alternative shelter.

26. Mr. RATTRAY expressed concern that the last sentence would restrict the ability of the courts to decide in favour of an eviction simply because an eviction order would have the consequence of making a certain number of people homeless. He believed it would be preferable for the paragraph to begin by asserting the independent right to adequate housing, regardless of the circumstances of eviction.

27. Mr. PILLAY said that, in his interpretation of paragraph 16, the obligation lay, not on the courts but on States parties, to ensure that no person was rendered homeless or exposed to subsequent violations of their human rights as a result of an eviction.

28. Mr. ADEKUOYE observed that it was not always practical or possible for States parties to provide alternative accommodation, particularly when the Government concerned had little control over population flows.

29. The CHAIRPERSON said that opponents of the right to housing tended not to regard with sufficient flexibility any such concept. Governments could not abandon their responsibility to provide alternative accommodation simply because the person evicted had broken the law. As human beings, those persons were entitled to shelter, however modest.

30. Mr. WIMER said it was important for the general comment to take into account the situation in countries where powers were distributed between the executive and the judiciary. The paragraph should be redrafted in such a way as to encompass all cases and should call on Governments to ensure that evictions were carried out in a humane manner, regardless of which branch of government held responsibility for the decision.

31. Mr. SADI said that he supported the views expressed by the previous speakers. He had some doubts about the statement in the last sentence that "No person should be left homeless". In absolute terms, that would include persons capable of finding housing. He asked for confirmation that the intention of the general comment was to assist destitute persons who were in urgent need of accommodation and had no alternative whatsoever.

32. Mr. TEXIER said that, because of the many different factors involved, the text should deal with the issue at a general level. In the past some legal experts had given grotesque interpretations to article 11 of the Covenant in order to deny the right to housing. At the domestic level, law enforcers should deal with cases of squatting on an individual basis, seeking always to reflect the spirit of the principles expressed in the general comment.

33. Mr. RATTRAY said that the present wording of paragraph 16 suggested that the persons concerned were being deprived of enjoyment of the right to adequate housing because of eviction. It was often the case that those persons had not previously had adequate housing. Furthermore, the authorities were obliged to provide alternatives which met certain standards, but if those alternatives were of a makeshift nature, they might not conform with the required standards under the Committee's General Comment No. 4. He hoped that the text of the paragraph under discussion could be redrafted to assert the right to housing independently of evictions.

34. The CHAIRPERSON said that the right to housing was always subject to progressive realization and available resources. The Committee might establish guidelines for the interpretation of what was "adequate", but it could not always expect Governments to meet specified standards, as they might lack the necessary resources. Such instances did not constitute violations of General Comment No. 4.

35. Mr. ADEKUOYE supported Mr. Rattray's remarks. He suggested that it would not be appropriate to introduce criteria defining adequate housing, in view of the circumstances existing in some developing countries.

36. Mr. PILLAY said that the last sentence could certainly be redrafted but, contrary to the view of some members of the Committee, he believed there was no question of interference by the executive in the work of the judiciary. Even where a court had ruled that an illegal occupier of land should be ejected, the Government would respect the court's judgements but would then come under an obligation to find alternative accommodation for persons rendered homeless by an eviction.

Paragraph 17

37. Mr. TEXIER said that the French version of the paragraph did not make it clear whether basic procedural protections and remedies should be available to occupiers or owners of occupied property. The latter category should also be taken into consideration, since privately-owned land was as likely to be occupied as State-owned property. He offered the example of invasions of land in Latin America where shanty towns had developed, some even connected to the municipal electricity and water supply, but without the occupiers possessing deeds for the homes they had built. The matter of providing deeds was more readily resolved in the case of State-owned property than in that of privately-owned land.

38. Mr. SADI said that the expression "legal protection" would be preferable to "procedural protection". He also proposed the addition of the phrase "prior to their eviction" at the end of the first sentence. The reference to an assumption of illegality in the first sentence was inappropriate. The basic premise should be reversed, an occupation being assumed to be legal until proven otherwise. Taking into account Mr. Texier's comments, he suggested that the first sentence should read: "An occupant of housing or land shall be assumed to be a legal occupant until proven otherwise. In the event that this legality is questioned in a court of law, the person(s) involved should be afforded full legal protection and remedies". For reasons of consistency, the word "demonstrate" in the third line of the paragraph should be replaced by "substantiate", and "where appropriate" in the fifth line should be replaced by "where necessary".

39. Mr. PILLAY recognized that entitlement to legal aid existed for both civil and criminal cases. The paragraph might be redrafted to state that "An occupier of land or a house is presumed to be a legal occupier. If it is shown that he is an illegal occupier, then he must be entitled to legal protection and remedies affordable in law".

40. Mr. ADEKUOYE said that it could be assumed that any person subjected to forcible ejection had previously been shown by due process to be an illegal occupier. Consequently, the last sentence of paragraph 17 relating to protection should be transferred to paragraph 14 or, alternatively, the entire paragraph should follow immediately after paragraph 14.

41. The CHAIRPERSON agreed that since, in paragraph 17, the legality or otherwise of occupation had not yet been established, the content of the paragraph should be placed earlier in the draft, although not in paragraph 14, which dealt with situations of demonstrated illegality.

42. Mr. CEVILLE said that the paragraph should be refocused on procedural protection of the occupier, regardless of whether the occupation was assumed to be legal or illegal.

43. Mr. CEAUSU suggested the following wording for the second sentence: "Apart from the need to demonstrate the illegality of the occupation, the right to procedural fairness and due process which international human rights law guarantees to all individuals must also be respected".

44. Mr. RATTRAY suggested that, since the primary concern was protection of human rights, and not the matter of legality or illegality of occupation, the first and second sentences might be redrafted to read: "It should be noted that basic procedural protections and remedies against forced eviction must be fully available to persons whose occupation of land or housing is challenged.". That should be followed by a sentence reading: "The right to procedural fairness and due process which international human rights law guarantees to all individuals must be observed in these circumstances." Such redrafting would situate the issue within the framework of procedural fairness and due process, which was indeed related to the substance of paragraph 14.

45. Mrs. JIMENEZ BUTRAGUEÑO said that she agreed with Mr. Texier that the interests of property owners should also be addressed.

46. Mr. TEXIER said he shared the view that value judgements regarding the legality or otherwise of occupation were not appropriate.

Paragraph 18

47. Mr. MARCHAN ROMERO, supported by Mr. SADI, considered that the gravity of the issue dealt with in the paragraph merited more forceful wording. The Committee should condemn the practices referred to, which were totally contrary to the spirit and the letter of the Covenant.

48. Mr. SADI drew attention to the ambiguity of the first sentence which implied that international agencies had instigated forced evictions.

49. The CHAIRPERSON concurred, but said that the paragraph was indeed directed against large projects in which the funding and support of international agencies was vital, although they did not themselves effect the evictions.

Paragraphs 19-22

50. Mr. MARCHAN ROMERO said that the excessively restrictive reference to the Olympic Games in paragraph 21 might be expanded to refer to sporting events in general.

51. Mr. WIMER and Mrs. JIMENEZ BUTRAGUEÑO drew attention to several changes that were needed in the Spanish version of the draft, which would require a general revision.

52. The CHAIRPERSON undertook to ensure that the correct Spanish terminology was employed in a revised Spanish version. He thanked Mr. PILLAY for agreeing to undertake the task of redrafting the General Comment. In response to a comment by Mrs. JIMENEZ BUTRAGUEÑO, he suggested that it would be premature to discuss the draft General Comment with the press.

Plan of action to strengthen the implementation of the International Covenant on Economic, Social and Cultural Rights

53. The CHAIRPERSON, introducing the Plan of Action to strengthen the implementation of the International Covenant on Economic, Social and Cultural

Rights, drawn up pursuant to the Committee's request at its fifteenth session, said that the document highlighted the need to provide additional expert assistance for the Committee. Support was required in particular for the preliminary analysis of reports by States parties, since, while non-governmental organizations and human rights monitoring groups published numerous reports on civil and political rights, they produced far less information concerning economic, social and cultural rights upon which the Committee could draw. It was therefore proposed to appoint three staff members to undertake that task. In addition, the Committee wished to enhance its cooperation with the specialized agencies and to organize workshops with a view to assisting States parties with reporting and follow-up. It was hoped that the additional funding required would be raised through voluntary contributions to the United Nations Human Rights Programme. In his view, it would also be useful to employ a consultant to work individually with States parties on reporting and follow-up, with funding being provided by reallocating resources currently spent on the holding of regional meetings. The plan of action, which had been noted by the Commission on Human Rights, had been forwarded to the High Commissioner for action, and would be included in the Committee's annual report.

ELECTION OF OFFICERS (agenda item 2) (continued)

54. Mr. Rattray was elected Vice-Chairperson by acclamation.

The meeting rose at 5.40 p.m.